



OLD VALUES - NEW HORIZONS

## COMMUNITY DEVELOPMENT

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### Approved Minutes Zoning Board of Adjustment

April 12, 2016

7:30 pm @ Community Development Department

Mark Samsel	Chairman	Present	Mike Mazalewski	Alternate	Present
Heath Partington	Vice Chair	Present	Kevin Hughes	Alternate	Present
Pam Skinner	Secretary	Present	Jim Tierney	Alternate	Excused
Mike Scholz	Member	Present	Jay Yennaco	Alternate	Excused
Bruce Breton	Member	Excused			

#### Staff:

Dick Gregory, ZBA Code Enforcement Administrator

Anitra Brodeur, Minute Taker

Mr. Hughes was seated for Mr. Breton at 7:30pm.

#### Public Hearings:

##### **Lot 17-L-53, Case # 5-2016**

**Applicant/Owner** -Kathleen Randall

**Location** – 5 Farmer Road

**Kathleen Randall wishes to withdraw her application**

Ms. Skinner read the case into the record. She also read a letter from the applicant explaining why she was withdrawing her application. The Board asked if any one in the audience was present to speak to the case. Mr. Scholz was fine with the withdrawal. Mr. Partington stated that the by laws state that the Board should consider the application if it is on the agenda. The Board also requested that the original requests be listed, even in the event of a request for a withdrawal.

**A motion was made by Mr. Scholz to grant a withdrawal for Case #5-2016 as requested.**

**Seconded by Mr. Hughes.**

**Vote 5-0.**

**Motion passes.**

##### **Lot 14-B-2005, Case # 8-2016**

**Applicant**-Edward N. Herbert Assoc., Inc.

**Owner**-London Bridge North, LLC

**Location**-91 London Bridge Road

**Zoning District**-Neighborhood Business District

Approved Minutes ZBA April 12, 2016

Variance relief is requested from **Section 604.1** of the Windham Zoning Ordinance to allow two (2) dwellings to be constructed, after the lot is subdivided, in the Neighborhood Business District, which is not an allowed use.

Ms. Skinner read the case into the record. Shane Gendron addressed the Board. The owner would like to take two of the lots and develop them with single-family homes. There has not been much interest to develop this lot commercially. The properties that the lot abuts are largely residential. Single-family homes will be a less intensive use in a high traffic area next to the high school. Mr. Gendron then read through the five criteria for the Board after Chairman Samsel asked the Board if they had any questions.

Mr. Gendron stated this would be listed as a “use” variance in past practice. The application will also go before the Planning Board and the Conservation Commission. Chairman Samsel asked the audience if there was anyone here to speak for or against the use of the property.

Mr. Scholz stated he was having a hard time identifying the hardship piece of the application. Mr. Gendron stated that a commercial property might be a more intensive use to the site, which would have a more profound impact on the land. A residence would not be as impactful. Mr. Scholz stated that the property across the street is listed as light industrial.

Mr. Samsel asked the history of when this was listed as Neighborhood Business. He asked if it was before London Bridge Road was established. Mr. Gendron stated that perhaps the access off Route 111 was once intended to support the property as Neighborhood Business.

**A motion was made by Mr. Partington to go into Deliberative Session. Seconded by Mr. Hughes.**

**Vote 5-0.**

**Motion passes.**

Mr. Partington stated that the Planning Board might look at rezoning this site. Yet, this proposal does not meet the basic objectives of the ordinance in use or scope. There may also be a loss of tax base in developing it as residential instead of commercial. Mr. Partington continued; he was not sure the intended proposed use would not diminish property values. This does not appear to be a unique situation. He does not think it meets the criteria for 1, 2, 3, or 5.

Mr. Scholz agrees with Mr. Partington assessment. He does not think it meets 1, 2, 3, or 5.

Mr. Hughes also agrees.

Mr. Samsel also spoke to the high traffic entering and exiting London Bridge Road. He would like to know more on the history of this property in relation to the history of the road.

**A motion was made by Mr. Scholz to deny relief as requested for Case #8-2016 under Section 604.1 of the Windham Zoning Ordinance to allow two (2) dwellings to be constructed, after the lot is subdivided, in the Neighborhood Business District which is not an allowed use. Seconded by Mr. Hughes.**

**Vote 4-1.**

**Motion passes.**

(Mr. Mazalewski is now seated for Mr. Breton at 8:03pm)

**Lot 18-L-503 Case # 9-2016**

**Applicant**-Meridian Land Services Inc.

**Owner**-Stephen Watkins & Alexandra Grigore

**Location**- 45 Woodvue Road

**Zoning District**-Residence A and Cobbetts Pond & Canobie Lake Watershed Protection District.

Variance relief is requested from **Section 702, App. A-1** of the Windham Zoning Ordinance, to allow an addition to an existing sunroom to be 23 ft. from the rear setback where 30 ft. is required.

Ms. Skinner read the case into the record. Mr. Timothy Ferwerda addressed the Board representing the applicants. Mr. Ferwerda submitted photographs of the property on behalf of the applicant to show that there was little vegetation between the property and the neighbors. There will be 67 feet between the houses. Chairman Samsel asked about a different variation of the structure on the property whereby the applicant would require less of a variance. Mr. Ferwerda then read through the 5 criteria.

Mr. Ferwerda showed where the existing sunroom currently sits on the property. The proposed change would have smaller windows and a fireplace and may afford more privacy. The height will be a single story structure.

Mr. Blaise Coco addressed the Board. He is the abutter to the property. Mr. Coco discussed his own variance that was withdrawn out of respect to his abutter. He will be putting a pool on his property and that has gone through the approval process. Mr. Coco does not quite understand how the neighbor would be requesting the variance for privacy but the room would actually be closer to his property line. He really only sees a hardship for number 4 of the criteria.

Mr. Coco spent some time discussing the garages in the neighborhood and how that relates to the request he had made for his own property. Mr. Coco would like to see a rendering of the property to see the proposed structure. He would like to see the Board continue the case.

Mr. Scholz asked about the right of way. He asked for clarification from Mr. Gregory as to why 43B Woodview was not an abutter. Mr. Gregory stated that it is not a town road. He stated it was a very different situation.

Mr. Stephen Watkins addressed the Board. He discussed the patio that was being installed on the other side of the home. Mr. Watkins stated that they hoped to position the entertaining areas away from the neighbor's home and have their view position towards the lake.

Chairman Samsel asked about a continuance. He asked if Mr. Watkins was open to discussing the changes further with the neighbor in an effort to come up with a proposed resolution. Mr. Watkins did not respond.

Ms. Grigore addressed the Board. She would like to expand the sunroom because the current sunroom is very narrow. She also stated that the large home behind her own is a huge emotional stress.

Mr. Coco was called up for his rebuttal. He stated that there was plenty of room on a different side of the home that would not require a variance. The home he resides in was allowed under current zoning. He also discussed trees being installed on his property for privacy as well.

Mr. Ferwerda stated that the house has been there since 1992 and there is uniqueness to the depth of that lot.

**A motion was made by Mr. Partington to go into Deliberative Session. Seconded by Mr. Scholz.**

**Vote 5-0.  
Motion passes.**

Mr. Mazalewski stated that the neighbor's testimony was weighing heavily on his decision. Other members of the Board were comfortable voting on the case but they understood the request for additional time.

**A motion was made by Mr. Mazalewski to continue the case to April 26<sup>th</sup>, 2016. Seconded by Mr. Scholz for discussion.**

Mr. Samsel stated that he would like to see the neighbors reach an agreement.

**Vote 1-4.  
Mr. Mazalewski-Yes  
Mr. Scholz, Ms. Skinner, Mr. Samsel, and Mr. Partington-No  
Motion does not pass.**

Mr. Scholz stated that he does think the property does meet the hardship requirement due to the lot configuration.

Mr. Partington stated that the sunroom would be guarding the patio to the right for the sake of privacy. That explanation then made sense to Mr. Partington in relation to viewing angles. The abutting structure to the rear of the property is unique; he does believe the plan is reasonable.

Mr. Scholz would also be in favor of this along with Mr. Mazalewski and Ms. Skinner.

There is not much else that could be done on this property in the backyard.

Mr. Mazalewski thinks they are asking for a little more than what is needed.

Mr. Samsel would approve this without the discussion/distractions that came forward this evening. There are two very large homes in the neighborhood; yet, the neighbors are arguing over a space that is 20 by 16.

**A motion was made by Mr. Partington to grant a variance for Case #9-216 under 702 Appendix A-1 of the Windham Zoning Ordinance to allow an addition to an existing sunroom to be 23 ft. from the rear setback where 30 ft. is required per plan submitted. Seconded by Mr. Scholz.**

Vote 4-1.

Motion passes.

Mr. Mazalewski-No, citing, (5) lack of hardship

(Mr. Hughes was again seated for Mr. Breton at 8:48pm)

**Lot 8-C-101, Case # 10-2016**

**Applicant**-Edward N. Herbert Assoc., Inc.

**Owner**-Andrew & Nancy Costa

**Location**-47 Roulston Road

**Zoning District**-Business Commercial A and Wetland & Watershed Protection District (WWPD)

Variance relief is requested from **Section 601.3** of the Windham Zoning Ordinance, to allow a commercial building, with a portion of the building (2,275 sq. ft.) and associated parking in the WWPD, which is not a permitted use.

Ms. Skinner read the case into the record. Mr. Shane Gendron addressed the Board. He represents the applicants. The proposed plan would locate a portion of the building and parking to be in the WWPD. Mr. Gendron and the applicant are trying to keep the total building percentage of the lot low (5%) and impervious area low (14%). He stated that this would go before Planning Board as a Major Site Plan. Not all the draining calculations have been done at this time.

Ms. Skinner asked if this was the old Trans Medic Building. Mr. Gendron stated that it is. Mr. Gendron then read the 5 criteria. He stated that there was no wetland impact on the property.

Mr. Scholz asked about the property above it. The run off above the site is substantial. The drainage would need to be properly managed on the site. Mr. Gendron is confident that an appropriate drainage plan can be proposed. It is a costly endeavour that that the applicant will incur if the variance is granted.

Mr. Scholz asked if Mr. Gendron had considered moving the building closer to the street. Mr. Gendron stated that he needed a 75-foot setback from the leach field.

Mr. Partington stated that his sticking point was that Mr. Gendron did not have a drainage design. Chairman Samsel stated that this has occurred many times over the years. Mr. Partington would still like to see more information about drainage.

Ms. Skinner mentioned the proximity of the property to Collins Brook. Roulston Road has flooded in the past. Mr. Gendron asked what the Board would need for a level of confidence in terms of a drainage design to get an approval from the Board this evening.

Mr. Partington suggested putting this application in front of the Conservation Commission to see what their input might be.

Chairman Samsel asked what kind of input the Conservation Commission might provide to assist in the decision.

Mr. Gendron asked about changing the minimum distance between the parking and the wetland area.

Mr. Scholz asked how far away the parking was away from the wetland; he is approximately 15 feet away. Mr. Gendron stated he would be happy to maintain 20 feet.

Mr. Scholz asked how many parking spaces were required. The parking spaces are the minimum required for the square footage of the building. Mr. Scholz would be comfortable with 25 feet of distance between the parking lot and the wetland.

**A motion was made by Mr. Scholz to go into Deliberative Session. Seconded by Mr. Partington.**

**Vote 5-0.  
Motion passes.**

Chairman Samsel is comfortable with the proposal and the professionalism of Mr. Gendron. He will need to meet the requirements of several other boards in town.

Mr. Partington agrees with #3 of the criteria. Yet, the other criteria he does not agree with. The possible exception would be 5B.

Mr. Scholz believes he does meet the 5 criteria.

Ms. Skinner would like the input of the Conservation Commission. It is a difficult area to develop due to the number of wetlands.

**A motion was made for Case #10-2016 to grant relief as requested from Section 601.3 of the Windham Zoning Ordinance, to allow a commercial building, with a portion of the building (2,275 sq. ft.) and associated parking in the WWPDP, which is not a permitted use with conditioned that the parking be no closer than 25 feet to edge of wetland as presented. Seconded by Mr. Hughes.**

**Vote 3-2.  
Motion passes.**

**Mr. Partington, Ms Skinner- no (citing reasons 1 and 2)  
Mr. Hughes, Chairman Samsel, Mr. Scholz-yes**

(Mr. Mazalewski once again sat for Mr. Breton at 9:23pm)

**Lot 17-C-101B, Case # 11-2016**

**Applicant**-Edward N. Herbert Assoc. Inc.

**Owner**-D.C. Development & Construction LLC,

**Location**-4 Spring Street

**Zoning District**-Residence A and Cobbett's Pond & Canobie Lake Watershed Protection District  
Variance relief is requested from **Section 702, App. A-1** of the Windham Zoning Ordinance, to allow the construction of a dwelling on a lot with 13,893 sq. ft. where 50,000 sq. ft. is required, frontage of 105 ft. where 175 ft. is required, a front setback of 44 ft. where 50 ft. is required and both side setbacks of 28 ft. where 30 ft. is required.

Ms. Skinner read the case into the record. Mr. Gendron addressed the Board. Mr. Gendron submitted Exhibits A and B into the record. The current structure sits within 8 feet of the property line. Mr. Gendron would be proposing a property that is 12% on impervious coverage. They are at 11.8% coverage of the lot.

Mr. Scholz asked what the volume increase would be. Mr. Gendron thought the increase would be 900-1000 square feet. A volume calculation is not required as it is a tear down.

Mr. Gregory stated it does not meet Section 406.2 because it is a tear down, not an expansion.

Mr. Mazalewski asked about the depth of the septic design.

Mr. Gendron then read the 5 criteria.

The Chairman asked for public input.

**A motion was made by Mr. Scholz to go into Deliberative Session. Seconded by Mr. Mazalewski.**

**Vote 5-0.**

**Motion passes.**

Mr. Partington went through the 5 criteria. It appears to meet all 5 criteria according to the Board.

**A motion was made by Mr. Partington for Case #11-2016 to grant variance relief from Section 702, App. A-1 of the Windham Zoning Ordinance, to allow the construction of a dwelling on a lot with 13,893 sq. ft. where 50,000 sq. ft. is required, frontage of 105 ft. where 175 ft., is required, a front setback of 44 ft. where 50 ft. is required and both side setbacks of 28 ft. where 30 ft. is required as presented. Seconded by Mr. Scholz.**

**Vote 5-0.**

**Motion passes.**

**Meeting Schedule**

Mr. Scholz spoke to the issue of a conflict in holding a meeting on election days. The Board can vote to not meet on election night.

**A motion was made by Mr. Scholz to cancel the November 8<sup>th</sup>, 2016 meeting and the September 13<sup>th</sup>, 2106 as both meeting conflict with elections. Seconded by Mr. Partington for discussion.**

Mr. Partington stated that some RSA require 30 days, which could mean a special meeting or meetings for the Board. Chairman Samsel believes the pool of people that would be impacted is relatively small. He is thinking it might be better to leave as is.

**After discussion, the motion was amended to only include cancelling the November 8<sup>th</sup>, 2016 meeting. Seconded by Mr. Partington.**

**Vote 5-0.  
Motion passes.**

#### **Meeting Minutes – Review and Approval**

**A motion was made by Mr. Scholz to approve the November 10, 2015 as amended. Seconded by Mr. Partington.**

**Vote 5-0.  
Motion passes.**

**A motion was made by Mr. Partington to approve the March 8, 2016 as amended. Seconded by Mr. Scholz.**

**Vote 5-0.  
Motion passes.**

Mr. Gregory stated that the Planning Board would like to meet with ZBA. Is the Board interested in doing so at this time? The Board does not have any concerns to bring before the Planning Board at this time.

**A motion was made by Mr. Scholz to adjourn at 10:14pm. Seconded by Mr. Mazalewski.**

**Vote 5-0.  
Motion passes.**

**Submitted by Anitra Brodeur & Dick Gregory**